

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote
Consistency in Methodology and Input
Assumptions in Commission Applications of
Short-run and Long-run Avoided Costs,
Including Pricing for Qualifying Facilities.

Rulemaking 04-04-025
(Filed April 22, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING MOTIONS TO COMPEL RESPONSES
TO DATA REQUESTS FILED BY THE INDEPENDENT ENERGY
PRODUCERS ASSOCIATION AND THE COGENERATION ASSOCIATION
OF CALIFORNIA/ENERGY PRODUCERS AND USERS COALITION**

I have received motions to compel responses to data requests filed by the Independent Energy Producers Association (IEP; motion dated January 4, 2005) and the Cogeneration Association of California/Energy Producers and Users Coalition (CAC/EPUC; motion dated December 9, 2004). Each motion claims that Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) have failed to respond fully to data requests served in this proceeding.

Examination of both motions reveals that the parties have not fully satisfied the requirement that they meet and confer prior to bringing discovery disputes to the Commission for resolution. For example, PG&E and SCE (jointly, the IOUs) have agreed to produce virtually no documents in response to the data requests. Instead, they have made general objections based on relevance, burden and confidentiality. By the same token, IEP and CAC/EPUC have in some cases

asked very broad questions with little attempt to link the questions to the matters the Commission must decide in this proceeding.

In my view, the parties need to spend at least 2 full days in meet and confer sessions. They should assume the following ground rules:

1. In this proceeding, the Commission will not continue to consider confidential all documents previously found to be confidential in R.01-10-024. Rather, only documents or portions of documents that upon review are truly confidential may continue to bear that status. Documents that will not continue to be considered confidential include:

- Documents already in the public record of the California Energy Commission (CEC), the Federal Energy Regulatory Commission (FERC) or any other administrative agency or court.
- Documents PG&E or SCE have already produced to another party without a confidentiality agreement;
- Documents that PG&E or SCE can produce to IEP and CAC/EPUC subject to a negotiated confidentiality agreement.

2. If the parties do not make significant progress in their meet and confer sessions to reduce the number of items in dispute, I will order continued and lengthy sessions.

3. The parties' meet and confer sessions shall attempt to resolve all objections PG&E and SCE have raised. This includes the IOUs' confidentiality objections as well as their objections based on burden, relevance and other standard discovery concerns.

4. Documents regarding PG&E and SCE's costs are relevant to this proceeding and must be produced.

5. Discovery requests that ask for every document PG&E or SCE produced in a long list of cases will generally be considered overbroad. Rather, SCE and

PG&E shall immediately turn over all data requests and written responses/objections propounded in those cases to the IEP and/or CAC/EPUC. CAC/EPUC shall then determine which documents they actually need from those responses, and the parties shall meet and confer on those lists before bringing the matter back to the Commission.

6. I will err on the side of requiring PG&E and SCE to produce documents.

7. Because I expect to require PG&E and SCE to produce a large amount of discovery in this case, the parties shall immediately negotiate and agree upon a form of confidentiality agreement and furnish it to me no later than January 24, 2005. Parties may consider the agreement ordered on January 24, 2004 in R.01-10-024 an appropriate model. That agreement is available as an attachment to the ruling at <http://www.cpuc.ca.gov/PUBLISHED/RULINGS/33426.htm>. The parties may, on the other hand, use their own model.

Parties shall report to me on the status of their meet and confer sessions and provide me their draft confidentiality agreement at the Prehearing Conference set for January 24, 2005. At that time I will set a conference call, if necessary, to hear a further status report on the parties' meet and confer negotiations. If it appears at that time that I can set a hearing to decide the matters that remain unresolved, I will do so. However, I expect the parties to settle a large number of the remaining discovery disputes on their own.

IT IS SO RULED.

Dated January 13, 2005, at San Francisco, California.

/s/ JULIE M. HALLIGAN

Julie M. Halligan
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Motions to Compel Responses to Data Requests Filed by the Independent Energy Producers Association and the Cogeneration Association of California/Energy Producers and Users Coalition on all parties of record in this proceeding or their attorneys of record.

Dated January 13, 2005, at San Francisco, California.

/s/ ERLINDA PULMANO
Erlinda Pulmano

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

R.04-04-025 JMH/eap

(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.